

Rule 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding

~~In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.~~

Rule 16. The Record on Review ~~or Enforcement~~

(a) Composition of the Record. ~~The record on review or enforcement~~ of an agency order consists of:

- (1) the order involved;
- (2) any findings or report on which it is based; and
- (3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) Omissions From or Misstatements in the Record. The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

Rule 17. Filing the Record

(a) ~~Agency to File; Time for Filing; Notice of Filing.~~ ~~The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.~~

(b) Filing — What Constitutes.

- (1) The agency must file:
 - (A) ~~the original or a certified copy of the entire record or parts designated by the parties; or~~
 - (B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.
- (2) ~~The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.~~
- (3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on

Rule 17. Filing the Record.

(a) Retaining the Record; Sending the Certified List. The agency must retain the record and send to this court a certified list or index, unless this court, on motion or sua sponte, orders otherwise.

(b) Certified List or Index.

- (1) **From the Patent and Trademark Office.** No later than 40 days after receiving the notice of appeal, the Commissioner must send to the clerk the certified list and a copy of the decision or order appealed. This constitutes compliance with the requirement of 35 U.S.C. § 143 and 15 U.S.C. § 1071(a)(3) for sending a certified record to the court.
- (2) **From Another Agency.** No later than 40 days after the court serves a petition or notice of appeal on an agency, the agency must send to the clerk the certified list or index and a copy of the decision or order being appealed.
- (3) **Index of VA Rulemaking Record.** In petitions for review under 38 U.S.C. § 502, if a petitioner has not adequately identified the rulemaking proceeding complained of, so that the Secretary of Veterans Affairs cannot send the certified list or index within the time provided in Federal Circuit Rule 17(b)(2), the Secretary must promptly move to waive or extend the time for filing the certified list or index.